Judgment for the plaintiffs.

Solicitors: *Braddell Bros.; Battenberg & Talma.*

SOO SENG HUAT v. PUBLIC PROSECUTOR

[A.Cr.J. (Chang Min Tat J.) October 4, 1967]

[Penang — Criminal Appeal No. 40 of 1967]

Gaming — Character lotteries — Common Gaming Houses Ordinance, 1953, s. 4(1)(c) — Possession of a record of stakes — Presumption under s. 11 — Onus.

Once possession is proved then the presumption under section 11 of the Common Gaming Houses Ordinance, 1953 passes the burden on the defendant to rebut the presumption on a balance of probabilities that that particular record refers to no lottery at all or to a lottery not then in progress. If he does so, he is entitled to an acquittal. If he does not do so or if he cannot do so he must be convicted.

Case referred to:—

(1) *Public Prosecutor* v. *Neoh Boon Cheong* [1960] M.L.J. 31.

MAGISTRATE'S CRIMINAL APPEAL.

Haji Suhaimi bin Dato' Haji Kamaruddin (Deputy Public Prosecutor) for the appellant.

Geh Cheng Lock for the respondent.

Chang Min Tat J. (delivering oral judgment): The respondent in this appeal was on the 23rd of April, 1967 found in possession of a record of stakes in character lotteries bearing the date April 4, 1967. Arising from that possession the respondent was charged in the magistrate's court with the offence of assisting in carrying on a public lottery, punishable under section 4(1)(c) of the Common Gaming Houses Ordinance. At the conclusion of the case for the prosecution and on the submission of the counsel for the respondent, the respondent was acquitted and discharged without his defence being called. Against that acquittal and discharge the public prosecutor now appeals.

The respondent in the court below relied upon the existence of the date April 23, 1967 on the record of stakes as casting some doubt upon any allegation that the record relates to a lottery then in progress. That reliance is clearly seen in the record of the learned trial magistrate and that submission would appear to weigh very considerably in his mind when he came to write his grounds of judgment. With every respect to everybody concerned that submission runs counter to the decision of the Court of Appeal in the case of *Public Prosecutor* v. *Neoh Boon Cheong*,[1] a decision which is not only binding on me but with which I respectfully agree. Possession having been proved against the respondent, a presumption is raised against him and until the contrary is proved, he is presumed to be assisting in a public lottery then in progress.

I do not think it is necessary or possible for me to add anything more to the interpretation of section 11 in the case cited and all that remains for me to say is that once possession is proved, then the presumption under section 11 passes the burden on the defendant to rebut the presumption on a balance of probabilities that that particular record refers to no lottery at all or to a lottery not then in progress. If he does so, he is entitled to an acquittal. If he does not do so or if he cannot do so he must be convicted. That does not mean to say of course that the presumption cannot be rebutted merely from the prosecution evidence. It can. But in this particular case reliance by the defence was placed on the date April 23, 1967 on the record of stakes but this date does not, in my view, in the absence of any evidence from one side or the other, establish as a fact that that record of stakes relates to that date specifically. Evidence must be called and such evidence must come from the defence having regard to the presumption and section 106 of the Evidence Ordinance.

The appeal is therefore allowed, the acquittal is set aside and the case is remitted to the magistrate for him to call upon the defence. The respondent is allowed bail in the sum of $1,000 in one surety.

Appeal allowed. Acquittal set aside. Case remitted to magistrate to call upon the defence.

SIVASUPRAMANIAM v. PUBLIC PROSECUTOR

[A.Cr.J. (Gill J.) October 5, 1967]

[K.L. — Criminal Appeal No. 54 of 1967]

Local Authority — Commencing building operations without prior authority — Whether owner of building liable — Municipal Ordinance (S.S. Cap. 133), s. 144(12) — Construction of.

In this case the appellant who was not the owner of the land commenced building operations involving the erection of a building without the prior approval of the appropriate authority in contravention of subsection (7) and punishable under subsection (10)(a) of section 144 of the Municipal Ordinance. He was charged in the magistrate's court and convicted on the overwhelming evidence of witnesses who saw him putting up the extension in respect of which the charge was made. This evidence was not rebutted. The main ground of appeal turned on the construction of subsection (12) of section 144 which by a statutory fiction deems the owner to have commenced or carried out the building operation.

Held: the reading of section 144 as a whole makes it clear that the legislature intended to saddle the owner of the land with the sole responsibility of seeing that section 144 was complied with. It is extremely unfair to saddle owners of land with this responsibility, especially when it is a common occurrence in most of the big Municipal areas and some of the Town Board areas for people to put up unauthorized buildings on lands not belonging to them and to squat on them, but